

## HOUSE BILL NO. 445

INTRODUCED BY B. HANDS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROTECT MONTANA FARMERS BY EXEMPTING FROM LIABILITY FARMERS WHO UNKNOWINGLY POSSESS OR USE A PATENTED PLANT; PROVIDING FOR THE SAMPLING AND ANALYSIS OF PATENTED PLANTS TO DETERMINE WHETHER A BREACH OF CONTRACT OR PATENT INFRINGEMENT HAS OCCURRED; AND REQUIRING THAT ACTIONS RELATED TO PATENTED PLANTS ARE GOVERNED BY MONTANA LAW."

WHEREAS, Montana has a unique national reputation for producing high-quality crops, and the state's unique agricultural heritage is dependent on maintaining this reputation; and

WHEREAS, Montana's economy is also dependent on tourism that results from maintaining its unique reputation as a state with a pure and preserved natural environment; and

WHEREAS, Montana's health and environment are dependent on family farms that make up the backbone of a healthy rural economy; and

WHEREAS, once planted, patented plants have been shown to be dispersed into the environment through means such as pollen drift, seeding mixing, and the inadvertent transfer of seeds by humans, animals, and extreme weather events; and

WHEREAS, the liability for the uncontrollable movement of patented plants is being unfairly passed from manufacturers of patented plants to innocent and unknowing farmers and other property owners.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION.** **Section 1. Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) "Farmer" means a person responsible for planting, managing, and harvesting a crop from land on which a breach of contract or patent infringement is alleged to have occurred.

(2) "Patented plant" means a plant or any plant part or material, including but not limited to seeds and genetic traits, that is patented by the U.S. patent and trademark office.

(3) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private

corporation, the state, a subdivision of the state, a trust, an estate, or any other legal entity.

**NEW SECTION. Section 2. Sampling of patented plants in cases of alleged breach of contract**

**or patent infringement -- rights of farmers -- sampling and analysis procedure.** (1) Before a person holding a patent on a patented plant may enter upon land farmed by another person to obtain crop samples for the purpose of determining whether a breach of contract or patent infringement has occurred, the patent holder or the patent holder's agent must:

(a) notify the farmer in writing of the allegation that a breach of contract or patent infringement has occurred and request permission to enter the farmer's land for the purpose of crop sampling;

(b) provide a copy of the notice and request to the department;

(c) obtain the written permission of the farmer for entry; and

(d) notify the farmer of any of the procedures described in subsection (2) that may apply.

(2) (a) If the farmer withholds permission for entry, the patent holder may petition the district court having jurisdiction over the area in which the land is located for an order granting permission to enter the farmer's land for the purpose of obtaining crop samples.

(b) If the patent holder believes that the crop from which samples are to be taken may be subject to intentional damage or destruction, the patent holder may petition the district court having jurisdiction over the area in which the land is located for a protective order to minimize interruption or interference with normal farming practices, including harvesting and tillage.

(c) Upon the request of either the farmer or the patent holder, an employee or agent of the department must be present for the crop sampling, provide for the collection of samples, or conduct any other aspect of the sampling or analysis process as requested. The farmer or the farmer's agent and the patent holder or the patent holder's agent may be present for the collection of any crop samples, and each must be notified of the time and location of the crop sampling at least 24 hours in advance.

(3) The farmer shall grant or deny permission for access within 10 days of receipt of the request to enter the farmer's land.

(4) The patent holder shall pay any fee charged by the department for activities conducted pursuant to subsection (2)(c).

(5) Samples for analysis may be taken from a standing crop, from representative standing plants in the field, or from ~~crop residue~~ CROPS remaining in the field after harvest.

(6) The results from any testing conducted pursuant to this section must be sent by certified mail by the testing party to all parties involved in the breach of contract of patent infringement investigation within 30 days after the results are reported from the testing laboratory.

**NEW SECTION. Section 3. Unknowning possession or use of patented plant -- exemption from liability.** A farmer is not liable for the presence or possession of a patented plant on real property owned or occupied by the farmer if the farmer did not knowingly buy or otherwise knowingly acquire the patented plant and if the farmer acted in good faith without knowledge of the patented nature of the plant.

**NEW SECTION. Section 4. Forum -- venue.** (1) The forum for an action related to [sections 1 through 3], other than a patent infringement, must be the courts of the state of Montana.

(2) The venue for an action under [sections 1 through 3] must be brought in the county in which one of the parties resides. If neither party resides in Montana, the venue must be brought in the county where the injury is alleged to have occurred.

**NEW SECTION. Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 80, chapter 5, and the provisions of Title 80, chapter 5, apply to [sections 1 through 4].

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